

## **METROPOLITAN AREA PLANNING COMMISSION**

### **MINUTES**

**May 8, 2003**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, May 8, 2003, at 1:30 P.M., in the Planning Department Conference Room, 10<sup>th</sup> floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Bud Henntzen, Chair; Kerry Coulter (In @ 1:38), Vice-Chair; Jerry McGinty; Morris K. Dunlap; Ron Marnell; Bill Johnson (In @ 1:31); Frank Garofalo; Ray Warren (Out @ 3:27); James Barfield; Elizabeth Bishop (In @ 1:33); and Don Anderson. David Wells; Jerry Michaelis; and John W. McKay Jr. were not present. Staff members present were: Dale Miller, Secretary; Donna Goltry, Assistant Secretary; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Scott Knebel, Senior Planner; and Rose Simmering, Recording Secretary.

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HENTZEN There is a photographer here today taking photos to show how we run our public hearing so don't be alarmed and smile for the camera.

**1. Approval of MAPC meeting minutes of April 24, 2003.**

**MOTION:** To approve MAPC minutes subject to adding paragraph about McAdams Neighborhood Plan provided language from staff and to add McGinty in attendance the entire meeting.

**DUNLAP** moved, **MARNELL** seconded the motion, and it carried (8-0).

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**2. Consideration of Subdivision Committee recommendations from the meeting of May 1, 2003. Ray Warren, David Wells, Elizabeth Bishop, and Bill Johnson present. James Barfield absent. Copies of their recommendations have been furnished to the Planning Commission.**

**2-1. SUB2003-15 – Final Plat – MCNEIL ADDITION, located north of 53<sup>rd</sup> Street North, on the east side of Greenwich Rd.**

- A. Since sanitary sewer is unavailable to serve this property, the applicant shall contact **County Code Enforcement** to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval. **Sedgwick County Code Enforcement shall be contacted for sewer and water requirements.**
- B. **City Water and Sewer Department** requests a petition for future extension of sanitary sewer and water services.
- C. The site is currently located within the Rural Water District No. 1. The applicant shall contact this water district to determine the ability of this property being platted to connect to their water line and submit a letter to MAPD and **County Code Enforcement** from the water district to that effect.
- D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- E. **County Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
- F. **County Engineering** requests complete access control to Greenwich Rd from Lot 1. Complete access control shall also be dedicated along Central for the west 25 feet of Lot 1.

The access controls have been platted as requested.

- G. The applicant shall guarantee the closure of any driveway openings located in areas of complete access control or that exceed the number of allowed openings.
- H. **County Engineering** requests that the applicant dedicate additional right-of-way for West St, or work with the adjacent owner to have it vacated. **The applicant has indicated that a vacation of the street right-of-way will be submitted.**
- I. The right-of-way width for West Street needs to be denoted.
- J. Per Sedgwick County Fire Department, access drives to any structure in excess of 150 feet from the edge of the roadway will need to be installed prior to final framing inspection, preferably before the start of any above grade construction work. Such drive to be installed according to fire department specifications: (1) Twenty feet of drivable surface is provided the entire length of the access drive designed to withstand the weight of fire apparatus in inclement weather with provisions for turning fire apparatus around. (2) The surface will need to be an all-weather material consisting of rock or gravel, ground asphalt, laid asphalt or concrete. It is to be applied a minimum of 4 inches in depth consistently over the entire width and length of the driving surface (gravel is prone to problems during extended periods of rain or snow and should be used with caution unless a good solid compacted base has been installed).

- K. The platting binder indicates a party holding a mortgage on the site. This party's name must be included as a signatory on the plat, or else documentation provided indicating that such mortgage has been released.
- L. As requested by the City Clerk, the City Council certification needs to be revised to include a signature line only, rather than referencing the "City Manager".
- M. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- N. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- O. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- P. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- Q. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- R. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- S. Perimeter closure computations shall be submitted with the final plat tracing.
- T. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- U. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- V. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MARNELL** moved, **WARREN** seconded the motion, and it carried (9-0).

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**2-2. SUB2003-36 – One-Step Final Plat –JAMES KROK ADDITION, located on the south side of 47<sup>th</sup> Street South, east of Greenwich Road.**

- A. Since sanitary sewer is unavailable to serve this property, the applicant shall contact **County Code Enforcement** to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval. **The applicant needs to contact Sedgwick County Code Enforcement for sewer and water requirements.**
- B. **City Water and Sewer Department** requests a petition for future extension of sanitary sewer and City water services. In the event the applicant proposes to extend City sewer at this time to serve the property, a petition shall be provided.
- C. The site is currently located within the Rural Water District No. 3. The applicant shall contact this water district to determine the ability of this property being platted to connect to their water line and submit a letter to MAPD and **County Code Enforcement** from the water district in that regard.
- D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- E. **County Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved. A cross-lot drainage agreement is needed.**
- F. The plat proposes one access opening along 47th St. South. **The Subdivision Committee has required complete access control along the west half of the property.**

- G. The applicant is reminded that this site is located within three miles of the City Limits of Wichita and will be heard by City Council. Therefore, the City Council signature block needs to be included on the final plat.
- H. As requested by the City Clerk, the City Council certification needs to include a signature line only, rather than referencing the "City Manager".
- I. The signature line for the County Commissioners Chairman needs to reference "Tim R. Norton".
- J. Per Sedgwick County Fire Department, access drives to any structure in excess of 150 feet from the edge of the roadway will need to be installed prior to final framing inspection, preferably before the start of any above grade construction work. Such drive to be installed according to fire department specifications: (1) Twenty feet of drivable surface is provided the entire length of the access drive designed to withstand the weight of fire apparatus in inclement weather with provisions for turning fire apparatus around. (2) The surface will need to be an all-weather material consisting of rock or gravel, ground asphalt, laid asphalt or concrete. It is to be applied a minimum of 4 inches in depth consistently over the entire width and length of the driving surface (gravel is prone to problems during extended periods of rain or snow and should be used with caution unless a good solid compacted base has been installed)
- K. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- L. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- M. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- N. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- O. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- P. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- Q. Perimeter closure computations shall be submitted with the final plat tracing.
- R. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- S. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- T. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MARNELL** moved, **WARREN** seconded the motion, and it carried (9-0).

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**2-3. SUB2003-40 – One-Step Final Plat – COUNTRY PLACE GREENS ADDITION, located on the north side of 13<sup>th</sup> Street North, west of Webb Road.**

- A. Municipal services are available to serve the site. City Water and Sewer Department requires an agreement regarding maintenance of the sewer service line.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- D. The plat proposes one access opening along 13th St. The plat's text states that one emergency access opening to 13th Street is proposed; however this needs to be specified on the face of the plat. In addition, the access opening needs to be limited to Reserve A.

- E. **Traffic Engineering** has requested the extension to the east property line of the 15-ft utility easement which is parallel to the front property line.
- F. A covenant shall be submitted regarding the private street, which sets forth ownership and maintenance responsibilities. The plat's text shall reference the platting of the reserve for private street purposes and shall state which specific lots are to be accessed by the reserve.
- G. The reserves being platted as private streets shall be labeled as private streets and shown appropriate street names.
- H. The plat's text shall be revised to reference Reserve A as containing "private streets".
- I. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- J. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- K. The Applicant needs to request a CUP adjustment, in order that the private street and lots correspond with the CUP.
- L. A note shall be placed on the final plat, indicating that this Addition is subject to the conditions of Country Place Greens Community Unit Plan (DP-89).
- M. A Note shall be placed on the plat that the lot numbers 13, 31, 43, 47 and 48 have not been platted.
- N. **County Surveying** requests a dimension for the northwesterly line of Lot 24.
- O. **County Surveying** has requested that the limits of the easement on Lots 24 and 38 be dimensioned.
- P. **County Surveying** has requested the diagonal portion of wall easement on Lots 1 and 27 be located.
- Q. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- R. As requested by the City Clerk, the City Council certification needs to be revised to include a signature line only, rather than referencing the "City Manager".
- S. As stated in the plat's text, the applicant proposes a zero front yard setback on all lots. A note to that effect shall be included on the face of the plat. The Subdivision Regulations permit the setback provisions to be modified by the plat upon the approval of the Planning Commission.
- T. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- U. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- V. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- W. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- X. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Y. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- Z. Perimeter closure computations shall be submitted with the final plat tracing.
- AA. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.

- BB. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- CC. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MARNELL** moved, **WARREN** seconded the motion, and it carried (9-0).

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**2-4. SUB2003-34 – One-Step Final Plat –LAUREL’S ACRES ADDITION, located south of 21<sup>st</sup> Street North, on the west side of 119<sup>th</sup> Street West.**

- A. The applicant shall guarantee the extension of sanitary sewer. A No Protest Agreement is needed regarding future water extension.
- B. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
- C. In accordance with the Access Management Regulations, a 60-ft half-street right-of-way is needed along 119th St. West.
- D. **City Engineering** has requested a No Protest Agreement for the paving of Eberly Court.
- E. On the final plat, the MAPC signature block needs to reference "Bernard A. Hentzen, Chair".
- F. The Applicant is advised that if platted, the building setbacks may be reduced to a 25-ft front setback and a 15-ft street side setback.
- G. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- H. As requested by the City Clerk, the City Council certification needs to be revised to include a signature line only, rather than referencing the "City Manager".
- I. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Q. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- R. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MARNELL** moved, **WARREN** seconded the motion, and it carried (9-0).

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**2-5.     DED2003-10 – Dedication of a Utility Easement, for property located on the northeast corner of Maple and Robin.**

OWNER/APPLICANT:       Mark and Jill Hames, 539 Wetmore, Wichita, KS 67209

AGENT:                       N/A

LEGAL DESCRIPTION:       The east 10 feet of Lot 32, except the north 150 feet, Park Acres Second Addition.

PURPOSE OF DEDICATION: This Dedication is a requirement of a zoning case (Case No. ZON 2003-02), and is being dedicated for construction and maintenance of a utility easement.

STAFF RECOMMENDATION: Accept the Dedication.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MARNELL** moved, **WARREN** seconded the motion, and it carried (9-0).

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**2-6.     DED2003-11 – Dedication of Access Control, for property located on the northeast corner of Maple and Robin.**

OWNER/APPLICANT:       Mark and Jill Hames, 539 Wetmore, Wichita, KS 67209

AGENT:                       N/A

LEGAL DESCRIPTION:       The east 10 feet of Lot 32, except the north 150 feet, Park Acres Second Addition.

PURPOSE OF DEDICATION: This Dedication is a requirement of a zoning case (Case No. ZON 2003-02), and is being dedicated for construction and maintenance of a utility easement.

STAFF RECOMMENDATION: Accept the Dedication.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MARNELL** moved, **WARREN** seconded the motion, and it carried (9-0).

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**2-7.     DED2003-12 – Dedication of Street Right-of-Way, for property located on the northeast corner of Maple and Robin.**

OWNER/APPLICANT:       Mark and Jill Hames, 539 Wetmore, Wichita, KS 67209

AGENT:                       N/A

LEGAL DESCRIPTION:       The south 20 feet of Lot 32, except the north 150 feet, Park Acres Second Addition.

PURPOSE OF DEDICATION: This Dedication is a requirement of a zoning case (Case No. ZON 2003-02), and is being dedicated for 20 feet of street right-of-way along Maple Street.

STAFF RECOMMENDATION: Accept the Dedication.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MARNELL** moved, **WARREN** seconded the motion, and it carried (9-0).

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**3-1.     VAC2003-10 – Request to Vacate a Drainage and Utility Easement.**

OWNER/APPLICANT:       Wichita Bible Church c/o Dwayne Lancaster

AGENT:                       MKEC c/o Brian Lindeback

LEGAL DESCRIPTION:       The south 10-feet of the north 35-feet of the of the east 60-feet of the platted 35 foot utility - drainage easement on Lot 14, Block E, AJ Christman 3<sup>rd</sup> Addition, an addition to Wichita, Sedgwick County, Kansas.

**LOCATION:** Generally located southwest of the Kellogg Street – Woodlawn Boulevard intersection, 6340 Eastwood.

**REASON FOR REQUEST:** Proposed freestanding building.

**CURRENT ZONING:** Subject property and all abutting and adjacent properties north, west and south of the site are zoned "SF-5" Single-Family Residential. Property east of the site, across Woodlawn, is zoned "B" Multi-Family Residential.

The applicant is requesting that a 10-foot wide (x) 60-foot long portion of a 105-foot (east end) to 80-foot (west end) wide platted drainage-utility easement be vacated. The 35-foot portion of the platted easement runs parallel to the north property line of Lot 14, Block E, AJ Christman Addition, 6340 Eastwood Avenue. The applicant is proposing to build a 40-foot (x) 25-foot freestanding building as part of expansion of the existing church. The AJ Christman 3<sup>rd</sup> Addition was recorded 08-27-1953.

There is drainage pipe in the easement, but no sewer at this location. Storm Water Management recommends vacation of the easement only where there is an encroachment into it; see exhibit and legal description.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from both private and public utilities and any other entity with a vested interest, Planning Staff recommends approval to vacate only that portion of the platted drainage - utility easement, as described in the legal description.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Derby Reporter, of notice of this vacation proceeding one time April 17, 2003, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described portion of the platted drainage – utility easement and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of the portion of the platted drainage – utility easement described in the petition should be approved subject to the following conditions:

1. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
2. All improvements shall be according to City Standards.
3. Vacate the south 10-feet of the north 35-feet of the of the east 60-feet of the platted 35 foot utility - drainage easement on Lot 14, Block E, AJ Christman 3<sup>rd</sup> Addition, an addition to Wichita, Sedgwick County, Kansas

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

1. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
2. All improvements shall be according to City Standards.
3. Vacate the south 10-feet of the north 35-feet of the of the east 60-feet of the platted 35 foot utility - drainage easement on Lot 14, Block E, AJ Christman 3<sup>rd</sup> Addition, an addition to Wichita, Sedgwick County, Kansas

BILL LONGNECKER, Planning staff presented staff report

BISHOP Is the site zoned single-family?

LONGNECKER Yes.

BISHOP There is a residence on the property?

LONGNECKER Currently the property is owned by a church and I believe the land use designation is actually a church.

BISHOP I am trying to understand where the church is in relationship to the property.

LONGNECKER The building shown on the exhibit is currently the only structure. The proposed building--additional accessory building--is right here. The church uses the existing structure and proposes to use the accessory structure.

BISHOP So when you say current building, you mean the church? I don't know why I thought the church was on the other side of Eastwood and that was a single-family residence.

LONGNECKER That is not my impression, no.

BISHOP Is the entrance to this building going to be from Woodlawn or from the property itself?

LONGNECKER The entrance will be off of Eastwood. They will have to get a building permit for that building, and any entrance off of Woodlawn would have to be approved.

CHARLOTTE FOSTER, 702 COURTLEIGH DRIVE, WICHITA KS 67218 I spoke with some of you at the Subdivision meeting and showed you lovely pictures of how the ditch used to look. I am president of my neighborhood association. I was on Mr. Pisciotte District Advisory Board, and he did work with us on getting the ugly ditch filled in and a culvert put there. And, the City will maintain that area back behind these houses now; before they couldn't because the bank was so steep.

The house there on the corner is owned by Wichita Bible Church, and I am concerned about putting a building behind that house. I don't know why we have a Zoning Code and then people come up here and can pretty much get what they want.

BISHOP I am still trying to get clear in my mind what is on that site.

FOSTER The church is south of Eastwood. Then across the street is this house on the corner.

BISHOP So it is a single-family residence right now.

FOSTER Yes, that is correct and the church is using it.

BISHOP So, the church intends to put a building in the backyard of this single-family residence.

GAROFALO I am confused now.

BISHOP It is a house, and it is owned by the church, but it looks like a single-family residence from the street.

GAROFALO You are opposed to a building? Why?

FOSTER Putting a 1,000 foot building behind this house.... what would this look like in our neighborhood?

GAROFALO What does the ditch have to do with that? Your objection is about the aesthetics of the building?

FOSTER Because they need 10 feet inside the easement... it looks nice now that they filled it in (the ditch). Now they want to put a building where it has been filled in.

WARREN We considered and made recommendation for this case at Subdivision. Easements are given across private property for the purpose of maintaining utilities. The case is a vacation case and not a zoning or code case, and we need to consider only the request to vacate. I am not going to get into the Code.

FOSTER There is a big culvert under there and they are going to build over the easement.

WARREN The City Staff has determined that they do not need this portion of the easement for the drainage.

JOHNSON I would restate the purpose of this request. The proposal is for vacation of an easement and is not about zoning.

CHUCK WILSON, Pastor of the Church, Wichita Bible Church: We will still be within the fenced backyard. We are not putting a building over any part that was the ditch before. We purchased the house 10 or 11 years ago, and it is used for a youth meetings. And, the proposed building is the enable us to do that, as well. It does not encroach on anything or the ditch.

LONGNECKER They will be 25 feet away from the property line with this encroachment.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**WARREN** moved, **GAROFALO** seconded the motion, and it carried (11-0).

**3-2. VAC2003-11 – Request to an Access Easement, located southwest of the Murdock and Market intersection.**

**OWNER/APPLICANT:** Wichita Home Builders Enterprises, Inc., Attn: Wes Galyon

**AGENT:** Baughman Company, P.A. c/o Terry Smythe

**LEGAL DESCRIPTION:** The south 19.47-feet of Lot 73, together with the north 4.53-feet of Lot 71, and together with the south 3.00-feet of the north 7.53-feet of the west 18.00-feet of said Lot 71, all on Chisholm Street, now Market Street, in Munger's Original Town Addition, Wichita, Sedgwick County, Kansas.

**LOCATION:** Southeast of Murdock Avenue & Market Street

**REASON FOR REQUEST:** Public access from alley to Market no longer needed.

**CURRENT ZONING:** Site and property south of the site are currently zoned "B" Multi-Family with a request for a zoning change to "GC" General Commercial. Property north and west of the site are zoned "GC". Property east of the site is zoned "B" and "GC".



The applicants are requesting the vacation of the access easement from the alley to Market, as dedicated by separate instrument. The dedication was recorded with the Register of Deeds, 12 -2000, film 2123, page 0401. The dedication was a condition of VAC2000-40, which was a request to vacate the northern 1/3 of the alley. VAC2000-40 was approved by the MAPC at their 09-21-2000 meeting. The rest of this alley was vacated by VAC2003-05, which was approved by the MAPC at their 04-10-03 meeting. The elimination of the alley as public ROW made the access easement unnecessary, hence the request. The Munger's Original Town Addition was recorded in Butler and Sedgwick counties in 1870.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from both private and public utilities and any other entity with a vested interest, Planning Staff recommends vacation of the public access easement dedicated by separate instrument as described in the legal description.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Derby Reporter, of notice of this vacation proceeding one time April 17, 2003, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described public access easement dedicated by separate instrument and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of the portion of the public access easement dedicated by separate instrument described in the petition should be approved subject to the following conditions:

1. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
2. All improvements shall be according to City Standards.
3. Vacate the south 19.47-feet of Lot 73, together with the north 4.53-feet of Lot 71, and together with the south 3.00-feet of the north 7.53-feet of the west 18.00-feet of said Lot 71, all on Chisholm Street, now Market Street, in Munger's Original Town Addition, Wichita, Sedgwick County, Kansas.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

1. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
2. All improvements shall be according to City Standards.
3. Vacate the south 19.47-feet of Lot 73, together with the north 4.53-feet of Lot 71, and together with the south 3.00-feet of the north 7.53-feet of the west 18.00-feet of said Lot 71, all on Chisholm Street, now Market Street, in Munger's Original Town Addition, Wichita, Sedgwick County, Kansas.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**WARREN** moved, **GAROFALO** seconded the motion, and it carried (10-0).

**3-3. VAC2003-12 – Request to a Utility Easement.**

**OWNER/APPLICANT:** James Burgardt

**AGENT:** Baughman Company, PA, c/o Terry Smythe

**LEGAL DESCRIPTION:** The north 20-feet of the south 25-feet of the east 40-feet of Lot 2, Burgardt Addition, an addition to Wichita, Sedgwick County, Kansas, and the north 20-feet of the south 25-feet of Lot 3, Burgardt Addition, an addition to Wichita, Sedgwick County, Kansas.

**LOCATION:** Southwest of Hillside Avenue – Pawnee Avenue intersection, 3027 East Pawnee.

**REASON FOR REQUEST:** The applicant proposes further development.

**CURRENT ZONING:** Subject property and adjacent and abutting north, east and west properties are zoned "LC" Limited Commercial. Abutting and adjacent properties south of the site are zoned "LC" and "SF-5" Single-Family Residential.

The applicant proposes further development on the site. There is sewer, but no water in the easement. The Burgardt Addition was recorded with the Register of Deeds in 08-19-1980.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from both private and public utilities and any other entity with a vested interest, Planning Staff recommends

approval to vacate only that portion of the platted utility easement, as described in the legal description, with the following conditions:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Derby Reporter, of notice of this vacation proceeding one time April 17, 2003, which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the above-described platted utility easement and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the platted utility easement described in the petition should be approved subject to the following conditions:
1. Abandon, relocate and reconstruct the existing sewer line and manhole at the applicant's expense, as approved by the Public Works Engineer or provide a guarantee to complete project.
  2. Retain the easement as a temporary easement until the sewer line is relocated.
  3. Provide new easement as needed.
  4. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
  5. All improvements shall be according to City Standards.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

1. Abandon, relocate and reconstruct the existing sewer line and manhole at the applicant's expense, as approved by the Public Works Engineer or provide a guarantee to complete project.
2. Retain the easement as a temporary easement until the sewer line is relocated.
3. Provide new easement as needed.
4. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
5. All improvements shall be according to City Standards.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**WARREN** moved, **GAROFALO** seconded the motion, and it carried (10-0).

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**3-4. VAC2003-13 – Request Vacate a Utility Easement.**

**OWNER/APPLICANT:** Bernard H Trachman Trust  
Dennis Bailey & Allan Kissack

**AGENT:** Baughman Company, PA c/o Terry Smythe  
Kaplan, McMillan & Harris c/o Bob Kaplan

**LEGAL DESCRIPTION:** The platted 10-foot utility easement running parallel to the north property line of Lot 2, Block 1, Florence Addition, ending at its point of intersection with the eastern 10-foot half of the platted 20-foot utility easement running parallel to the property lines of Lots 1 and 2, Block 1, Florence Addition, Wichita, Sedgwick County, Kansas.

**LOCATION:** Generally located northeast of the Broadway Avenue – 50<sup>th</sup> Street South intersection.

**REASON FOR REQUEST:** Build on the property.

**CURRENT ZONING:** Subject property and properties abutting and adjacent to the north, west and south are zoned "GC" General Commercial. Property abutting on the east side is zoned "B" Multi-family.

The applicant is proposing a building that will encroach into the platted 10-foot easement located on the north side of Lot 2, Block 1, Florence Addition. There are no sewer or water in the easement. There is a Lot Split associated with this case. Sewer and water will have to be extended to the site(s). The Florence Addition was recorded with the Register of Deeds 05-13-1985.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from both private and public utilities and any other entity with a vested interest, Planning Staff recommends vacation of the portion of the platted easement as described in the legal description, with the following conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

- 1) That due and legal notice has been given by publication as required by law, by publication in the Derby Reporter, of notice of this vacation proceeding one time April 17, 2003, which was at least 20 days prior to this public hearing.
- 2) That no private rights will be injured or endangered by the vacation of the above-described platted utility easement and the public will suffer no loss or inconvenience thereby.
- 3) In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of the portion of the platted utility easement described in the petition should be approved subject to the following conditions:

1. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
2. All improvements shall be according to City Standards.
3. Vacate the platted 10-foot utility easement running parallel to the north property line of Lot 2, Block 1, Florence Addition, ending at its point of intersection with the eastern 10-foot half of the platted 20-foot utility easement running parallel to the property lines of Lots 1 and 2, Block 1, Florence Addition, Wichita, Sedgwick County, Kansas.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

1. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
2. All improvements shall be according to City Standards.
3. Vacate the platted 10-foot utility easement running parallel to the north property line of Lot 2, Block 1, Florence Addition, ending at its point of intersection with the eastern 10-foot half of the platted 20-foot utility easement running parallel to the property lines of Lots 1 and 2, Block 1, Florence Addition, Wichita, Sedgwick County, Kansas.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**WARREN** moved, **GAROFALO** seconded the motion, and it carried (10-0).

**3-5. VAC2003-14 – Request Vacate a 20-Foot Utility Easement.**

**OWNER/APPLICANT:** Bar VA Properties, LLC c/o Keith Anderson

**AGENT:** Baughman Company PA c/o Russ Ewy

**LEGAL DESCRIPTION:** The platted 20-foot utility easement located between Lots 9 & 8, Pawnee & West Industrial Park 2<sup>nd</sup> Addition (see attached legal description)

**LOCATION:** Generally located northwest of the West Street – Pawnee – K-42 intersection.

**REASON FOR REQUEST:** Easement not needed.

**CURRENT ZONING:** Subject property and all abutting and adjacent properties are zoned “LI” Limited Industrial.

The applicant proposes the vacation of the 20-foot easement that is located between Lots 9 & 8, Pawnee & West Industrial Park 2<sup>nd</sup> Addition. The applicant wishes to release the land from the conditions of the easement. There is no sewer or water in the easement. The Pawnee & West Industrial Park 2<sup>nd</sup> Addition was recorded with the Register of Deeds 04-25-1995.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from both private and public utilities and any other entity with a vested interest, Planning Staff recommends vacation of the platted easement as described in the legal description and as shown on the exhibit, with the following conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Derby Reporter, of notice of this vacation proceeding one time April 17, 2003, which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the above-described platted utility easement and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of the portion of the platted utility easement described in the petition should be approved subject to the following conditions:

1. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
2. All improvements shall be according to City Standards.
3. Vacate the platted 20-foot utility easement located between Lots 9 & 8, Pawnee & West Industrial Park 2<sup>nd</sup> Addition

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

1. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
2. All improvements shall be according to City Standards.
3. Vacate the platted 20-foot utility easement located between Lots 9 & 8, Pawnee & West Industrial Park 2<sup>nd</sup> Addition

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**WARREN** moved, **GAROFALO** seconded the motion, and it carried (10-0).

**3-6. VAC2003-16 – Request Vacate Temporary Easements Dedicated by Separate Instruments.**

**OWNER/APPLICANT:** Environmental LLC  
Green Lantern Inc., c/o Brain Richardson (contract purchaser)

**AGENT:** A & M Consultants Inc., c/o Tim Austin

**LEGAL DESCRIPTION:** See Exhibit

**LOCATION:** Generally located southwest of the Greenwich – Kellogg Intersection.

**REASON FOR REQUEST:** Develop the property for a car wash.

**CURRENT ZONING:** The site and the abutting and adjacent properties to the south and west are zoned "GC" General Commercial and "SF-5" Single-Family Residential. Properties north and east of the site, across Kellogg, are zoned "GC", "LC" Limited Commercial and "LI" Limited Commercial.

The applicant is requesting consideration for the vacation the two temporary easements, located on the east side of Lot 1, East Kellogg Acres, as recorded on Film 359 and Page 387. There is no reference on the dedication of how long these two temporary easements would be in effect, thus the request to vacate. There is no mention of the purpose of the easements on the dedication, but the dedication does refer to no encroachment into the temporary easements and no interference with the ingress and egress onto the temporary easements. The East Kellogg Addition and was recorded with the Register of Deeds December 23, 1955. The applicant has had CON03-07, Conditional Use for a car wash, approved by the MAPC at their 04-24-2003 meeting. Conditions attached to CON03-07 include a drainage plan approved by the Public Works Engineer and Storm Water Management and a revised Site Plan.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from both private and public utilities and any other entity with a vested interest, Planning Staff recommends approval to vacate the temporary easements, dedicated by separate instrument, upon approval of a drainage plan by the Public Works Engineer and Storm Water Management and a revised Site Plan.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Derby Reporter, of notice of this vacation proceeding one time April 17, 2003, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described temporary easements dedicated by separate instrument and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of the portion of the temporary easements dedicated by separate instrument and described in the petition should be approved subject to the following conditions:

1. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
2. All improvements shall be according to City Standards.
3. Submit a drainage plan for review and approval by the Public Works Engineer and Storm Water Management.
4. Temporary easements will remain until that time when the drainage plan is approved by the Public Works Engineer and Storm Water Management.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

1. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
2. All improvements shall be according to City Standards.
3. Submit a drainage plan for review and approval by the Public Works Engineer and Storm Water Management.
4. Temporary easements will remain until that time when the drainage plan is approved by the Public Works Engineer and Storm Water Management

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**WARREN** moved, **GAROFALO** seconded the motion, and it carried (10-0).

4. **Case No.: CON2002-55** – Stephen and Alice Jett (owners/applicants); Kaplan, McMillan, & Harris c/o Bob Kaplan (attorney) request Sedgwick County Conditional Use amendment to CON2002-21 to allow outdoor parking of vehicles for vehicle repair as a rural home occupation on property zoned "RR" Rural Residential on property described as;

That part of the Southwest Quarter of Section 1, Township 26 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, described as:

Beginning at a point on the West line of said Southwest Quarter with an assumed bearing of North 00 degrees 00'00" East, on said line a distance of 1800.00 feet north from the Southwest corner of said Quarter; thence continuing North 00 degrees 00'00" East, on said West line, a distance of 420.00 feet; thence North 86 degrees 44'10" East, parallel with the South line of said Southwest Quarter, a distance of 569.50 feet; thence South 00 degrees 00'00" West parallel with said West line, a distance of 420.0 feet; thence South 86 degrees 44'10" West, parallel with said South line, a distance of 569.50 feet to the point of beginning, subject to a road right-of-way on the West. Generally located North of 69<sup>th</sup> Street North on the east side of 135<sup>th</sup> Street West.

**BACKGROUND:** The applicant requests to amend the existing rural home occupation Conditional Use (CON2002-21) for vehicle repair limited (a transmission shop) on a 5-acre un-platted tract, located on the east side of north 135<sup>th</sup> Street West, north of 69<sup>th</sup> Street North and K-96, within the City of Colwich Zoning Area of Influence. The requested amendment is for a deviation from the Unified Zoning Code (UZC) standard that prohibits outdoor vehicle storage on this existing Conditional Use site.

All property surrounding the application area is zoned "RR" Rural Residential. Surrounding the application area to the north, east, and south is one piece of property under agricultural production; further north and south of the site are large-lot single-family residences. To the west of the application area are two large lot single-family residences, these two residences lie within 500 feet of the Conditional Use garage building.

CON2002-21 is subject to 9 conditions (see the attached resolution), to include Condition #3 which states: "Outdoor storage of vehicles, equipment, parts, waste, waste containers, or any other associated items is prohibited. All vehicles associated with the conditional use shall be stored inside the proposed 30x60 foot building."

The requested Amendment site plan proposes a 3,952 square foot fenced vehicle storage area north of the Conditional Use garage (see the attached site plan). Depending on drive aisle width, this fenced area could store approximately 20 cars. The agent for the applicant states that the cedar fence is at least 6 feet in height, and the proposed storage area surface is unpaved. The site plan demonstrates that the proposed outdoor vehicle storage area has no screening to the south, between the garage and the building located to the west of the garage.

The Unified Zoning Code (UZC) permits "Automobile painting, upholstering, rebuilding, renovation, reconditioning, body and fender works, and overhaul conducted entirely within an enclosed structure with no outdoor storage of vehicles, parts, or equipment" as a rural home occupation "by right" on parcels of 20 acres or greater, and further than 600 feet from dwellings without home occupations. Because the application area is less than 20 acres, and is less than 600 feet from other dwellings without home occupations, a Conditional Use was required for the existing rural home occupation. The UZC supplementary conditions (prescribed standards) for rural home occupations are intended to mitigate negative affects on rural and residential areas. The prohibition of outdoor vehicle storage, along with size limitations, and limitations on the number of outside employees, all work to keep rural home occupations limited in scale and intensity, thereby protecting neighbors from adverse commercial affects.

**CASE HISTORY:** This property, under the current applicant/owners, sought and received a Conditional Use for a dog-breeding kennel (CU 340) which became effective on March 8, 1991. The Sedgwick County Department of Code Enforcement then revoked CU 340 on October 14, 1991 as a result of failure to comply with the conditions. The owners filed for reconsideration of the kennel Conditional Use, but were informed on October 18, 1991 that Section 17(C)(8) of the County Zoning Resolution prohibits the refilling

of a conditional use permit case within one year following the advertised public hearing date of a similar application. CU 340 for a dog-breeding kennel now remains revoked.

The current Conditional Use, CON2002-21, was denied by the City of Colwich Planning Commission on May 28, 2002, and was denied by the Metropolitan Area Planning Commission (MAPC) on July 11, 2002. Both denials were based on staff findings, which found the proposed use to be incompatible in character with nearby residences. The Sedgwick County Commission overrode the Colwich Planning Commission and MAPC with a required unanimous vote to approve the Conditional Use request on August 28<sup>th</sup>, 2002.

The agent for the applicant specifically stated, on several occasions, at public hearings, that the requested Conditional Use could operate under the requirements of the UZC, to include the code prohibition of outdoor vehicle storage. The agent specifically stated that the majority of the business at the application area is rebuilding transmissions that are shipped in, repaired, and shipped out – negating the need for vehicle storage. The agent further stated that if necessary, vehicles could be transported to an off-site location for storage. The applicant stated that arrangements had already been made for off-site storage.

**ADJACENT ZONING AND LAND USE:**

NORTH:	"RR"	agricultural fields, single family residences
SOUTH:	"RR"	agricultural fields, single family residences
EAST:	"RR"	agricultural fields
WEST:	"RR"	agricultural fields, single family residences

**PUBLIC SERVICES:** The property is located along north 135<sup>th</sup> Street West, a two-lane, section line, gravel road with a 50 foot half-width right of way adjacent to the application area. No traffic count is available for this section of 135<sup>th</sup> which dead ends approximately 800 feet north of the application area. The property has one drive entrance onto 135<sup>th</sup>.

**CONFORMANCE TO PLANS/POLICIES:** The "Sedgwick County Development Guide", amended in January 2002, of the 1999 *Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as "rural."

The UZC states that home occupations "...are intended to permit residents to engage in home occupations that are compatible with residential land uses and to ensure that home occupations do not adversely affect the integrity of residential and rural areas."

The UZC permits "Automobile painting, upholstering, rebuilding, renovation, reconditioning, body and fender works, and overhaul conducted entirely within an enclosed structure with no outdoor storage of vehicles, parts, or equipment" as a rural home occupation; in the case of the application area, a Conditional Use was required for the rural home occupation. The UZC does not permit outdoor vehicle storage in the "RR" district.

**RECOMMENDATION:** The Comprehensive Plan identifies this area as "rural"; the Zoning Code clearly intends to protect rural areas and residents from incompatible land uses and the adverse effects of commercial activities.

Several neighbors expressed opposition to the original Conditional Use. Staff received one call from a neighbor opposing the present request. The neighbors desire a rural residential area, and oppose the applicant's efforts to deviate from the standards of the UZC, which would result in increased commercial intensity and outdoor activity at the Conditional Use site.

The applicant accepted the UZC supplementary condition prohibiting outdoor vehicle storage when the original Conditional Use was approved; the applicant stated that they could operate under the standards of the UZC. To now deviate from the standards of the UZC (and the existing Conditional Use) would set a precedent for approving Conditional Uses, and then incrementally weakening their conditions and the standards of the UZC.

The Conditions of the existing Conditional Use, and the supplementary conditions of the UZC for rural home occupations, are intended to mitigate against negative commercial affects. To allow outdoor vehicle storage at this Conditional Use site, regardless of visual screening, would result in increased business activity, traffic, and noise from the application area – within 500 feet of single-family homes. To allow outdoor vehicle storage would also allow the Conditional Use to expand from an indoor-only use to an outdoor use, bringing noise and other affects from the commercial activity outdoors. The existing Conditional Use also prohibits outdoor repair work, which would be difficult to enforce if the site allowed for screened outdoor vehicle storage. Outdoor vehicle storage could result in negative visual affects when gates are left open, or when stored vehicles exceed the height of the screen fence. The proposed site plan shows that the proposed vehicle storage area would not be completely screened from the south, which would result in negative visual affects from that direction. The outdoor vehicle storage could have the appearance of a vehicle salvage yard, which is not permitted in the "RR" district, and would be out of character with the surrounding area.

Therefore, it is recommended that this requested Amendment to Conditional Use CON2002-21 be DENIED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the surrounding area: All property surrounding the application area is zoned "RR" and used for agricultural and residential purposes; two residences exist at less than 500 feet to the west of the proposed use building. The proposed Conditional Use Amendment for outdoor vehicle storage would increase the intensity of the commercial operation and would allow a portion of the conditional use to take place outdoors, making the Conditional Use out of character with the surrounding area. The proposed outdoor vehicle storage area would not be completely screened from the south, resulting in negative visual affects from that direction.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "RR" Rural Residential, which primarily permits large lot residential uses. The property has a Conditional Use for vehicle repair, limited (CON2002-21), which conforms to the supplementary conditions of the UZC. The applicant previously stated that outdoor

vehicle storage is not necessary for the Conditional Use business; therefore, the site could continue to be used without the requested Conditional Use Amendment.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed Conditional Use Amendment would subject neighbors directly across 135<sup>th</sup> to increased commercially generated noise, odors, and traffic. The amendment would allow this increase in noise to take place outdoors, as opposed to the current indoor restriction. The proposed Conditional Use Amendment would also subject neighbors to the visual affects of stored vehicles.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The requested Conditional Use Amendment is not in conformance with the Comprehensive Plan; this area is designated as "rural", and therefore not appropriate for the requested increase in commercial intensity or outdoor storage of vehicles. Outdoor vehicle storage is not a permitted land use in the "RR" district under the UZC, and the requested Amendment is not in conformance with the supplementary conditions of the UZC for rural home occupations. The purpose of the UZC supplementary conditions is to keep rural home occupations compatible with their surroundings through limited scale and intensity, and to mitigate the negative affects of commercial activity.
5. Impact of the proposed development on community facilities: The requested use would impact the dead-end, un-paved North 135th Street West with increased commercial traffic. As a rural residential area, the local infrastructure is not designed or maintained to absorb increased commercial activity.

SCOTT KNEBEL, Planning Staff presented staff report.

WARREN It indicated that this was rejected by MAPC in the year 2002. What was the vote on that?

KNEBEL Your vote was 6-4 to deny the request on July 11, 2002.

WARREN Then we were overridden by an unanimous vote at the County Commission?

KNEBEL Yes, and I should also mention that this new request has been heard by the Colwich Planning Commission and their recommendation is denial as well.

BARFIELD If we deny this will it go to Board of County Commission?

KNEBEL That would be up to the applicant. If they appealed the decision, then yes it would.

WARREN Is this the document I have here the recommendation from Colwich Planning Commission?

KNEBEL Yes, the minutes from the Colwich Planning Commission were included in your packet.

BOB KAPLAN, 430 N. Market, for the applicant This is Mr. Jett's livelihood. The Unified Zoning Code permits 72 hours of parking by right except Condition #3 prohibits it for Mr. Jett's property. We originally agreed to no outside parking, but it is not working. When this first came up I told him to work by appointment only with no outside parking, and in theory that is fine, but people drop off vehicles that have no appointed times. So there are 3 or more vehicles that are outside that are not in the garage. I told County Law that I only need 72 hours of parking, and the Unified Zoning Code provides that by right. Let me show you some slides we have put together. It is a nice and well kept place and is well landscaped. I go to the Colwich Planning Commission and think they are going to approve this and then they do not.

Mr. Neville owns a lot of property out there and it does not bother him at all as he states in a letter that I have provided you. The surrounding property is mostly farm ground. There is not water out there that anybody wants to drink. There is an environmental case pending. There was a pipeline that burst, so it is polluted out there, so it is not likely to develop residential. The Jett's have done this for 30 years and nobody said anything about it. All I need is an amendment to condition #3, and we will limit parking to 5 or 6 cars. These cars are operable. They just need work. We will keep all the conditions of the approval from Conditional Use the County approved but need condition #3 amended.

BARFIELD I remember when this was before us last time and you said the majority of the work was going to be on a wholesale basis.

KAPLAN I was wrong. He does do work that is crated in and out, but he also does farming repairs and equipment. I thought he could do it by appointment but people are not compliant with appointment times. He is not making it, and I talked him into that, and he is not making it.

BISHOP As I recall when we considered this previously Mr. Jett applied for a building permit, and he did not have a successful home-occupation permit. After he got the building permit he built a building that was twice the size that was stated in the building permit.

KAPLAN There was a problem with the building permit. It was the contractor not Mr. Jett. One of my complaints was that we didn't do a land use case when we were here before.

BISHOP What we were presented with at MAPC was a building that was already in existence that Mr. Jett was then asking for permission to use it as he wanted to use it.

KAPLAN There were building Code violations, but those were corrected. I have talked to Mr. Wiltse, and he said he has no problem at all. We are looking at a Conditional Use.

GAROFALO The area that is designated to park cars. How many cars can he put in there?

KAPLAN He wants maybe 6. He said he made it larger because he wanted to enclose a propane tank. You can see that it is a pretty large enclosure. You can put quite a few cars in here, but only wants 5 or 6. This gentleman, the one that is objecting, I don't understand it because the cars are hidden.

GAROFALO What is the average number of cars a day setting out there?

KAPLAN I don't know.

MR. JETT There are never any cars just sitting around. Just the ones that are being worked on that a customer dropped off that I work on that same day.

KAPLAN That is all we want is the flexibility. Right now we can not accept a car that we cannot put in that four bay garage. We have to send them away. We have to wait until a bay comes open and call the customer to bring in a car, and we can't bring in another car until we take the other one out.

GAROFALO Does this go back to the County Commission?

MILLER If it is approved, it will go to the Board of County Commissioners because of the Colwich Planning Commission denied the request. It will have to be a unanimous vote of the County Commission to approve it.

BARFIELD I am looking at what is an unpaved area there behind the fence.

KAPLAN It is a rock area.

BARFIELD The oil is going to leak in the ground. What are we going to do about that?

KAPLAN I had Randy Rathbun come here and that pipeline break. There was bad break, and it is not going to be much difference from the oil pan leaking. Most of these folks are drinking bottled water.

TERIESA (TRACY) TAUBER, 13420 W. 69<sup>TH</sup> N., COLWICH, KS 67030: I am the neighbor to the south, and one of the reasons that the Board of County Commission approved the Conditional Use was that Mr. Kaplan and Mr. Jett stated over and over that there was not going to be outside parking. If this amendment passes, we will just do this over again. Having a major transmission shop will affect the sale of our land. It holds twenty vehicles. There are no inspections unless somebody turns him in, so we oppose this amendment and want the conditions to stand as they are.

KAPLAN Keep in mind please, when the Board of County Commissioners hears this, we will have to have a unanimous vote for this amendment to be approved. I don't know how many cars that will hold. I provided in my packet to you a proposed motion.

JOHNSON Dale it seems like since K-96 was widened that is going that direction. It seems like we are getting a lot of Conditional Uses that are close to the highway. Have we looked at the impact of the land from that highway? One was a gentlemen that kept cars in a fenced and another was truck outfit. Have we looked at this differently than those cases?

MILLER We would like to think we are consistent in the way we look at these. We are looking at K-96 in conjunction with the Quad County folks. They are looking at hiring a consultant to do a study of this section of K-96, but as far as policy, I think we are handling this consistently with the way that we are doing things in the past.

JOHNSON The study you are talking about, it will probably be while before we get those results?

MILLER Yes.

MARNELL I think that the parking associated with the business is a reasonable request and that area that in enclosed that fence is higher than a car and will hide the cars and not create an eye sore.

**MOTION:** To amend CON2002-21 condition #3 as follows: Outdoor storage of equipment, parts, waste, waste containers, or any other associated item is prohibited. All vehicles associated with Conditional use shall be in compliance with the Unified Zoning Code, Article II, Section II—B.10.a; shall not exceed six (6) in number; and if not in the designated and approved 30' x 60' garage, shall be parking within the fenced enclosure provided therefore.

**MARNELL moved, DUNLAP seconded the motion.**

**SUBSTITUTE MOTION** That the application for an amendment to CON2002-21 be denied based on staff comments.

**BISHOP moved BARFIELD seconded the motion.**

WARREN I am going to oppose the motion to deny. This has been there for years and years. All we were doing at that point was giving them a permit to do what they have been doing already, and compared to a large farming operation I think it is a reasonable amendment.

DUNLAP I am opposed the substitute motion because of the same reason. About three hours ago I was out there, and I looked at the operation. It is a very clean operation and you cannot see the operation from K-96.



JOHNSON Scott, were you at the Colwich Planning Commission? Can you confirm what Kaplan had said that he thought it would be a positive vote from the discussion, but it turned out to be a negative vote.

KNEBEL Yes, I was there. I agree with Mr. Kaplan. I was surprised with the outcome based on the discussion during the meeting.

BISHOP I believe that one of the main reasons that the Board of County Commissioners approved the Conditional Use to begin with was that they were presented with the building that was already there. The business was there, and they were asked to approve after the fact. They had gotten a promise there would be no outside storage.

**SUBSTITUTE MOTION:** Fails 3-8. (MCGINTY, BISHOP, BARFIELD in favor of the denial.)

**MOTION:** To approve carries 8-3. (MCGINTY, BISHOP, BARFIELD opposed.)

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5. **Case No.: CUP2003-19 DP43 Amendment #3** – Wal-Mart Real Estate Business Trust (owner), Spear & McCaleb Co., P.C. c/o Jason Mohler (agent) request Amendment to The Kincaid Park Commercial C.U.P. on property described as;

Lots 1, 2 and 3, Block A, Kinkaid Park Addition; Lots 1 through 16, Block A, Kinkaid Park 3rd Addition; and Lot 1, Block A, Kinkaid Park Fifth Addition to Wichita, Sedgwick County, Kansas. Generally located Southeast corner of Pawnee and Broadway.

**BACKGROUND:** The applicant is requesting that DP-43 Kincaid Community Unit Plan be amended to divide Parcel 2 into one large parcel for a new Wal-Mart SuperCenter (Parcel 2A) and five outparcels (Parcels 2B-2F). The proposed changes would enable redevelopment of the existing shopping area on the southeast corner of Pawnee and Broadway.

The property is zoned "GC" General Commercial. Wal-Mart would be located on the eastern side of the property, near St. Francis Avenue, on a 21.45-acre tract. Proposed use and development intensity for Parcel 2A (Wal-Mart) would be the same as is currently allowed as a shopping center with 30 percent building coverage and 0.40 floor area ratio (FAR). Height would be reduced from eight to six stories.

Two smaller parcels (Parcel 2B, 0.79 acre; and Parcel 2C, 0.82 acre) would be located along Pawnee and three parcels (Parcel 2D, 0.62 acre; Parcel 2E, 1.49 acres; and Parcel 2F, 1.93 acres) would be located along Broadway. Proposed use for Parcels 2B, 2C, 2E and 2F would be any commercial use permitted by right in the "LC" Limited Commercial zoning district, excluding car wash, night club, sexually oriented business, tavern and drinking establishment. Proposed use for Parcel 2D is a service station. Parcels 2B-2F would be subject to 30 percent maximum building coverage, 0.40 FAR, and maximum height of 35 feet.

The Wal-Mart parcel would continue to allow a nursery and garden center and outdoor display. The nursery and garden center would be located at the northwest corner of the building. The applicant has agreed to screen outdoor work and storage areas, including portable storage containers. A proposed 10-foot screening wall is shown on the site plan for the southeast corner of the site for this purpose. The existing wall on the south property line (apparently constructed by the apartment development on Parcel 4) would remain or be repaired, if needed. This wall varies from three to eight feet in height. The proposed landscape plan for Parcel 2A would add coniferous and deciduous trees on the north side of the wall to enhance the separation with the apartment complex to the south. A landscaped street yard comprised of berms, coniferous and deciduous trees is added along St. Francis to screen the back of the Wal-Mart for traffic traveling on St. Francis to the apartment complexes to the south.

Setbacks are reduced from 80 feet to 35 feet along Broadway and Pawnee. Setbacks are not changed on St. Francis, which are 35 feet except for a 150-foot segment where the setback narrows to 20 feet.

No changes are proposed for parking requirements, which exceed the Unified Zoning Code baseline. Signage requirements would remain as is.

To enhance the redevelopment, the applicant is providing enhanced landscaping, architectural compatibility, consistent lighting within the parcels, cross-lot circulation, and pedestrian circulation. The site plan has identified a location for a bus stop to replace the current bus stop at the shopping center. The number of curb cuts allowed by General Provision 2 has not been changed by the amendment, but one curb cut on St. Francis and the drive opening closest to Marion Road on Parcel 4 will be closed.

Parcels 1, 3 and 4 are not included within the boundaries of the area proposed for amendment by this application; therefore no changes are proposed for these parcels. They are zoned "GC". Parcel 1 currently is developed with four buildings and five uses, including Taco Tico, Meineke Discount Muffler, Advanced Auto Parts, Dollar General, and Action Rent-to-Own. Parcel 3 is developed with bank, Bank of America. Parcel 4 is developed with three apartment complexes, John Mack Mews, River Walk Apartments, and The Shores.

Hermann Hill Park is located to the west of the C.U.P. Also, a car lot and a manufactured home sales lot on property zoned "GC" are located to the west. The properties along the north side of Pawnee are zoned "LC" and "GC" and are developed with a restaurant, car lot, hotel, liquor store and other retail-type uses. A residential neighborhood is located to the north of these businesses along Pawnee. The property to the east of St. Francis Avenue is zoned "LI" Limited Industrial and has several industrial and/or warehouse businesses, some vacant land, and two wireless communication monopole towers. A railroad right-of-way separates this industrial strip from the residential neighborhood to the east.

The Arkansas River and the John Mack Bridge are located 400 feet south of the property. The John Mack Bridge is listed on the National Historic Register. An environs review has been completed for the proposed Wal-Mart building. The proposed building materials and colors compliment the historic bridge.

**CASE HISTORY:** The property was platted as Kincaid Park Addition, recorded on December 12, 1972. DP-43 Kincaid C.U.P. was approved originally in 1971, and amended in 1973 and 1981.

**ADJACENT ZONING AND LAND USE:**

NORTH: "GC"; "LC"	Restaurant, hotel, liquor store, retail, car lot
SOUTH: "GC"	Multi-family, four-plexes, duplexes
EAST: "LI"	Industrial/warehouse buildings, wireless monopole towers, vacant, railroad right-of-way
WEST: "TF-3"; "GC"	Hermann Hill Park and police station, car lot, manufactured home sales lot

**PUBLIC SERVICES:** Broadway and Pawnee are both four-lane arterial streets. The intersection is signalized and left-turn lanes are constructed approaching the intersection. A right turn decel lane is constructed from the northern drive to Parcel 2A around the corner to Parcel 3. Current (2002) traffic volumes were 21,660 ADT on Pawnee and 15,369 ADT on Broadway. This is projected to increase to 28,138 ADT on Pawnee and 23,400 ADT on Broadway. A traffic impact study was prepared by Traffic Engineering Consultants (March 2003) to evaluate anticipated traffic increases by the redevelopment of the site with discount store of 205,000 square feet in size, plus the five additional parcels for development. Based on Traffic Engineer's review of this study, recommended improvements are to extend the left-turn lane on Broadway from the northern entrance to the southern entrance and to extend the right-turn decel lane northward from its current terminus at Marion Road to the right-turn decel lane beginning at the northern entrance to Parcel 2A. The other improvement is to extend the right-turn decel lane from its current terminus to St. Francis.

Other normal public services are available. Some utilities would need relocated for the development; these will require a vacation of some utility easements.

**CONFORMANCE TO PLANS/POLICIES:**

The "Wichita Land Use Guide, as amended 1/02" of the 1999 *Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "Commercial" development. **Commercial Objective III.B** encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses", with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the "Wichita Land Use Guide", and **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. The **Commercial Locational Guideline #3** of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed C.U.P. is in conformance with the general recommendations of the Comprehensive Plan.

The surrounding residential area is identified for "revitalization". These are neighborhoods experiencing some market decline and needing to be stabilized. **Residential Objective II.B** of the 1999 *Update* seeks to "minimize the detrimental impacts of higher intensity land uses and transportation facilities located near residential living environments" through **Strategy II.B.4** that recommends plan review "to ensure that building placement and height, circulation, signage, screening and lighting for non-residential land uses do not adversely impact residential areas". The increased landscaping and screening should help address this strategy.

**RECOMMENDATION:** The proposed amendment will represent a significant investment in a revitalization area of the city. It should enhance the shopping opportunities for residents in South Wichita. The addition of landscaping along the streets and within the parking lot, and the architectural elements of the project should enhance the visual appearance of the development.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to subject to the following conditions:

1. Guarantees shall be provided for extending the left-turn center lane on Broadway to the southern entrance to Parcel 2A, and extending the right-turn decel lane on Broadway from Marion Road to form a continuous decel lane.
2. The southernmost third entrance to Parcel 2A shall be closed, and the middle entrance on St. Francis shall be closed.
3. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
4. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
5. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Parcels 1 and 3 are zoned "GC" General Commercial and developed with retail, auto service and bank uses. Parcel 4, also zoned "GC", is developed with medium to high density apartments. Hermann Hill Park and a fire station is located to the west of the C.U.P. Also, a car lot and a manufactured home sales lot on property zoned "GC" are located to the west. The properties along the north side of Pawnee are zoned

"LC" and "GC" and are developed with a restaurant, car lot, hotel, liquor store and other retail-type uses. A residential neighborhood is located to the north of these businesses along Pawnee. The property to the east of St. Francis Avenue is zoned "LI" Limited Industrial and has several industrial and/or warehouse businesses, some vacant land, and two wireless communication monopole towers. A railroad right-of-way separates this industrial strip from the residential neighborhood to the east.

2. The suitability of the subject property for the uses to which it has been restricted: The property is suitable for continued use as zoned "GC" General Commercial and as developed according to current C.U.P. requirements.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed redevelopment represents a desirable redevelopment to benefit the neighborhood. However, traffic would be expected to increase in the vicinity. The presence of the loading and storage uses along St. Francis could be detrimental to the apartment complexes relying on this drive for access unless stringent screening and landscaping are installed and maintained.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "Wichita Land Use Guide, as amended 1/02" of the 1999 *Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "Commercial" development. **Commercial Objective III.B** encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses", with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the "Wichita Land Use Guide", and **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. The **Commercial Locational Guideline #3** of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed C.U.P. is in conformance with the general recommendation of the Comprehensive Plan. The recommended conditions are intended to achieve site design features to conform to the locational guidelines and **Strategy III.B.2**. These conditions will also address **Residential Objective II.B** of the 1999 *Update* that seeks to "minimize the detrimental impacts of higher intensity land uses and transportation facilities located near residential living environments" through **Strategy II.B.4** that recommends plan review "to ensure that building placement and height, circulation, signage, screening and lighting for non-residential land uses do not adversely impact residential areas".
5. Impact of the proposed development on community facilities: Projected traffic increases from the development should be mitigated by the addition of the center turn lane and the decel lanes. The presence of the bus stop is desirable and the addition of pedestrian connections from the Wal-Mart SuperCenter to the arterial sidewalk will encourage pedestrian use.

BISHOP abstains and removes herself from the Board.

GAROFALO How will the truck traffic be handled? Do you have something to show what you are talking about?

GOLTRY Shows on slides. There will be a decel lane. Originally the applicant proposed to exclude car washes, but they have since requested that car washes be allowed. Staff feels there is not a lot of residential use in the area except the apartment zoned "GC". If car washes are allowed, they should be subject to the supplementary use regulation of the Unified Zoning Code. With these conditions, staff would recommend to allow car washes.

GAROFALO Where will the truck traffic come in and out?

GOLTRY St. Francis is going to be at the back of the development where the loading docks will be located.

GAROFALO Where are the drives going to be? St Francis--they will be closing the innermost drive on their parcel?

GOLTRY The middle drive on St. Francis will be closed.

SPEAR AND MCCAULEY CO., P.C., JASON MOHLER We are in agreement with staff and the recommendations in the staff report.

GOLTRY The District Advisory Board III heard this case last night and did recommend approval.

**MOTION:** To approve with the changes discussed by staff.

**GAROFALO** moved, **COULTER** seconded the motion, and it carried (10-0) **BISHOP** abstained.

6. **Case No.: ZON2003-21** – Wichita Area Builder's Association, Attn: Wes Galyon request Zone change from "B" Multi-family Residential to "GC" General Commercial on property described as;

Lots 71 and 73, on Market Street, Mungers Original Town, Wichita, Sedgwick County, Kansas. Generally located Southwest of the Market and Murdock intersection.

**BACKGROUND:** The applicant is seeking "GC" General Commercial zoning for Lots 71 and 73, Munger's Original Town Addition, located southwest of the Market Street and Murdock Street Intersection. The lots are currently zoned "B" Multi-Family Residential and are vacant or part of a public access easement. Rezoning the lots will give the applicant the same zoning for its property on this block.

The site is part of a block wide area with all but the southeast corner (120-feet x 132-feet) of it zoned "GC". The southeastern corner is zoned "B" and is developed as a private parking lot for Eby Construction, which abuts Pine and Market Streets. There are

two office buildings on the block with the most recent development being the applicant's, the Wichita Area Builders Association (WABA), building on the north end. The office faces Main Street with its parking located to the east, south and southeast of the building. The other office building is located in the southwestern third of the block, faces Main Street, with parking in the front of the building and on its north side. A private parking lot for Utility Contractors is located on the southwest end of the block and abuts Main and Pine Streets. There are two undeveloped sites also located in the block.

The north to south alley that had connected Murdock (north) to Pine (south) has had its northern one-third vacated by the applicant (see case history). Sedgwick County (VAC2003-05, MAPC approved 04-10-2003) is in the process of vacating the remaining two-thirds of the alley. The applicant has filed a request to vacate a public access easement (see case history) that was a condition of vacating the northern one-third of the alley. Parts of both of these lots being considered for rezoning today form the public access easement to Market Street. The MAPC recommended Sedgwick County's zoning request from "B" to "GC" on the three lots (Lots 65, 67 and 69, Munger's Original Town Addition) immediately south of the site, at their 04-10-2003 meeting; prior to the applicant's request for rezoning, the Sedgwick County request was the most recent zoning activity in the immediate area.

The area around the site is developed predominately as office with commercial zoning and some "B" zoning. Single-story and two-story offices are north of the area. West of the area are offices, for Sedgwick County (with multi-story parking), the Red Cross, and Fire Station #1. South of the area are a vacant commercial building, Eby Construction's office and Utility Contractors' office. In this southern area there are several structures that have National Historical Site Status, including the Ark Valley Lodge and the Old Sedgwick County Courthouse. The site is outside their historical buffer area. There are single-story offices and older apartments east of the site's area, across Market Street.

**CASE HISTORY:** Lots 71 and 73 are part of the Munger's Original Town Addition, which was recorded in both Butler and Sedgwick counties in 1870. Parts of Lots 71 and 73 were dedicated as a public access easement, by separate instrument, as a condition of VAC2000-40, MAPC approved 09-21-2003. The applicant has applied to vacate this public access easement, VAC2003-00005, MAPC hearing, 05-08-2003.

**ADJACENT ZONING AND LAND USE:**

NORTH:	"GC"	General Commercial	Office, parking
SOUTH:	"GC"	General Commercial	undeveloped, parking
	"B"	Multi-family	
WEST:	"GC"	General Commercial	Office, undeveloped
EAST:	"GC"	General Commercial	Office, Apartments, 4-plex
	"LC"	Limited Commercial	
	"B"	Multi-Family	

**PUBLIC SERVICES:** Market Street is a one-way, northbound two-lane arterial road. Main Street is a one-way, southbound four-lane arterial. Murdock is a four lane arterial with a turn lane. Pine Street is a two-lane local street. The daily traffic counts at the Murdock - Market intersection is 3,533 ADT's north of the intersection, 4,281 ADT's south of the intersection, 8,947 ADT's west of the intersection and 3,277 ADT's north of the intersection. The 2030 Transportation Plan projects no change for these roads. Public sewer and water services are available.

**CONFORMANCE TO PLANS/POLICIES:** Commercial location guidelines contained in the 2002 update of the *Wichita-Sedgwick County Comprehensive Plan* indicate that commercial sites should: be located adjacent to arterial streets or major thoroughfares; be coordinated with mass transit routes, high density residential, employment or other intensive uses; have site design features that limit noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential uses; be located in compact clusters or nodes versus extended strip development; and be located in areas of similar development, and where traffic patterns, land uses and utilities can support such development. The *Wichita Land Use Guide* depicts this site as appropriate for commercial uses. The site is in the Center City Plan, which identifies it as an area that should prioritize infill site opportunities; the applicant has done that recently with its development of the WABA site. The Center City Plan identifies its future land use as residential, but recent and proposed development has been office, WABA, or will be office, the Sedgwick County 911 facility. There currently is no residential development in the block.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Properties to the south and east are zoned "GC" General Commercial, "LC" Limited Commercial, and "B" Multi-family. Properties to the north and west are zoned "GC". These areas have experienced some recent commercial/office infill development with the WABA office being the most recent development and a proposed Sedgwick County 911 facility to be built. There are undeveloped commercial sites in the area. The "B" zoned properties have older apartments, parking lots and some undeveloped sites.
2. The suitability of the subject property for the uses to which it has been restricted: The site is an isolated 60 foot (x) 132 foot area zoned "B" multi-family. The site could be developed for a small multi-family use, but it would be out of character with the recent commercial development and rezoning in the area that surrounds it.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The requested zoning change of "B" to "GC" is in character with the area and would not detrimentally affect nearby property, of which most of it is zoned "GC" and developed as office or commercial.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The requested zoning change to "GC" matches the plan's recommendation of commercial uses for this site.

5. Impact of the proposed development on community facilities: Impact will be minimal, although traffic will increase as the site's current undeveloped and vacant state changes to a commercial/office use.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MARNELL** moved, **JOHNSON** seconded the motion, and it carried (11-0).

7. **Case No.: CON2003-11** – Forrest G. and Delva J. Butts (owners); AT&T Wireless c/o Ronald J. Ripper (applicant); Selective Site Consultants c/o Ron Jones (agent) request Sedgwick County Conditional Use to permit a 250-foot high self-support lattice tower on property zoned "RR" Rural Residential on property described as;

A tract of land situated in the Northwest Quarter of Section 33, Township 29 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, more particularly described as follows:

Commencing at the Southeast corner of the Northwest Quarter of said Section 33; thence North 03 degrees 54'02" West along the East line of said Northwest Quarter, a distance of 458.92 feet; thence North 90 degrees 00'00" West, a distance of 222.16 feet to the point of beginning; thence North 90 degrees 00'00" West, a distance of 100.00 feet; thence South 00 degrees 00'00" West, a distance of 100.00 feet; thence South 90 degrees 00'00" East, a distance of 100.00 feet; thence North 00 degrees 00'00" East, a distance of 10.00 feet; thence continuing North 00 degrees 00'00" East, a distance of 90.00 feet to the point of beginning. Generally located approximately one-half mile south of 111<sup>th</sup> Street South on the west side of the Kansas Turnpike (I-35).

**BACKGROUND:** The applicant is seeking a Conditional Use to permit the construction of a 250-foot high self-support lattice tower (see attached "Tower Elevation & Antenna Configuration") for use by AT&T Wireless. The subject property is zoned "RR" Rural Residential and is located approximately one-half mile south of 111<sup>th</sup> Street South on the west side of the Kansas Turnpike (I-35). Wireless Communication Facilities over 65 feet in height in the "RR" Rural Residential zoning district may be permitted with a Conditional Use.

The character of the surrounding area is agricultural (see attached "Vicinity Map"). All surrounding property is zoned "RR" Rural Residential and is used for agriculture. The nearest residence is located approximately 650 feet south of the proposed tower. The view of the tower from the residence will be partially obstructed by a mature hedge row and by agricultural out buildings located between the residence and the proposed tower.

The tower is proposed to be located within a 10,000 square foot lease area as shown on the attached "Overall Site Plan." Access to the site is proposed via a 20-foot wide access and utility easement to Washington. The tower is proposed to be located in the center of a 75-foot by 75-foot equipment compound enclosed by a five-foot high chain link fence. The equipment compound is proposed to have building and/or equipment pads for four telecommunication providers. Since the equipment compound is located more than 150 feet from all property lines, screening of the equipment compound is not required. The proposed tower location conforms to all setback requirements of the Compatibility Height Standard.

The applicant indicates (see attached "Site Justification" and "AT&T Wireless 2003 Wichita Build") that the proposed wireless communication facility is needed for AT&T Wireless to provide wireless communication services along the Kansas Turnpike south of Haysville, to the cities of Mulvane and Haysville, and along K-15 and Rock Road between Derby and Mulvane. The applicant indicates that there are no towers or other structures in the area to meet their communication needs.

AT&T Wireless indicates that it needs to mount its antennas at a height of 220 feet; however, the applicant has requested to construct a 250-foot high tower, which is contrary to the Unified Zoning Code (UZC) requirement to remove unused portions of towers. Therefore, planning staff recommends that an initial tower height of 220 feet be approved and that the tower be designed for future extensions in height at such time as a wireless service provider demonstrates a need to install antennas at a height exceeding 220 feet.

Since the proposed tower will exceed 200 feet in height, the Federal Aviation Administration (FAA) will require aircraft warning lights to be installed on the tower. The applicant proposes to use the FAA's dual lighting option consisting of red lights at night and medium intensity flashing white lights during the day. The FAA regulations pertaining to the dual lighting system are attached. The UZC prohibits strobe lighting such as the flashing white lights proposed by the applicant; however, the UZC allows the Board of County Commissioners to modify Supplementary Use Regulations (such as the strobe lighting prohibition) upon receiving a favorable recommendation from the planning commission. Planning staff recommends that the Board of County Commissioners modify the lighting requirement to comply with the FAA mandated aircraft warning lights.

**CASE HISTORY:** The subject property is unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH:	"RR"	Agriculture
SOUTH:	"RR"	Agriculture, farm-related residence
EAST:	"RR"	Agriculture
WEST:	"RR"	Agriculture

**PUBLIC SERVICES:** No municipally-supplied public services are required. The applicant will extend electrical and phone service to the site. The site has access to Washington, an unpaved township road.

**CONFORMANCE TO PLANS/POLICIES:** The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. The Location Guidelines of the Wireless Communication Master Plan indicate that new facilities should be located: 1) on multi-story buildings or other structures; 2) on existing poles in street rights-of-way, parking lots, or athletic fields; 3) on existing towers for personal wireless services, AM/FM radio, television, school district microwave antennas, and private dispatch systems; 4) in wooded areas; 5) on identified city and county properties; or 6) on highway light standards, sign structures, and electrical support structures. The Design Guidelines of the Wireless Communication Master Plan indicate that new facilities should: 1) preserve the pre-existing character of the area; 2) minimize the height, mass, or proportion; 3) minimize the silhouette; 4) use colors, textures, and materials that blend in with the existing environment; 5) be concealed or disguised as a flagpole, clock tower, or church steeple; 6) be placed in areas where trees and/or buildings obscure some or all of the facility; 7) be placed on walls or roofs of buildings; 8) be screened through landscaping, walls, and/or fencing; and 9) painting towers red and white instead of using strobe lighting. Since the time the Wireless Communication Master Plan was adopted, the FAA changed their regulations to require day-time strobe lighting; whereas, when the plan was adopted, the FAA allowed painting towers red and white instead of using strobe lighting. The Unified Zoning Code requires wireless communication facilities to comply with a compatibility height standard of one foot of setback for each foot of structure height from adjoining properties zoned "TF-3" or more restrictive. This compatibility height standard can be reduced or waived through a Conditional Use or a Zoning Adjustment.

**RECOMMENDATION:** Based upon the information available prior to the public hearings, planning staff recommends that the request be APPROVED subject to the following conditions:

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met, except as otherwise provided in Item F.
- B. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the governing body.
- C. The support structure shall be a "self-support lattice" design that generally conforms to the approved elevation drawing and that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- D. The support structure shall be 220 feet in height and shall be designed and constructed to accommodate communication equipment for at least four wireless service providers.
- E. The support structure and its foundation shall be designed and constructed in such a manner that permits future height extension to 275 feet and future loading expansion to accommodate communication equipment for at least six wireless service providers.
- F. The tower shall be lighted only with a dual lighting system consisting of red lights at night and medium intensity white flashing lights during the day that conforms with FAA regulations.
- G. The applicant shall obtain FAA approval regarding "objects affecting navigable airspace" and "impacts to terminal instrument procedures" for the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the MAPD, Code Enforcement Office, and Director of Airports prior to the issuance of a building permit.
- H. Revised site plans and elevation drawings indicating the approved design of the wireless communication facility shall be submitted for approval by the Planning Director within 60 days of approval of the Conditional Use by the governing body and prior to the issuance of the Conditional Use Resolution.
- I. The site shall be developed in general conformance with the approved site plans. All improvements shall be completed before the facility becomes operational.
- J. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- K. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is agricultural. The properties surrounding the subject property in all directions are zoned "RR" Rural Residential and are used for agriculture. The proposed wireless communication facility is consistent with the zoning, uses, and character of the area.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "RR" Rural Residential and is currently used for agriculture. The site is apparently suitable for continued agricultural use. A Conditional Use may be granted to permit a wireless communication facility in the "RR" Rural Residential zoning district; however, the facility should conform to the guidelines of the Wireless Communication Plan as much as possible. The proposed facility conforms to most of the plan's guidelines.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects on residentially-zoned properties in the area should be minimized by the screening, lighting, and compatibility standards of the Unified Zoning Code, which should limit noise, lighting, and other activity from adversely impacting these properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility conforms to the Location Guidelines of the Wireless Communication Master Plan since there are no other towers or tall structures in the vicinity of the site which can accommodate the communication needs of the applicant. The proposed wireless communication facility conforms to the Design Guidelines of the Wireless Communication Master Plan by minimizing the height, mass, and proportion of the facility by utilizing an unobtrusive color with a matte finish to minimize glare and by being placed in an area where existing vegetation obscures some of the facility from view. The Unified Zoning Code requires wireless communication facilities to comply with a Compatibility Height Standard of one foot of setback for each foot of structure height from adjoining properties zoned "TF-3" or more restrictive. The proposed tower conforms to all setback requirements of the Compatibility Height Standard.

5. Impact of the proposed development on community facilities: FAA approval should ensure that the proposed tower does not detrimentally impact the operation of airports in the vicinity.

SCOTT KNEBEL, Planning Staff presented staff report, and indicated that the applicant had requested just prior to the meeting that the tower be required to be only 250 feet high rather than the 275 feet recommended by staff.

SELECTIVE SITE CONSULTANTS, RON JONES We basically are hand and hand with the staff. I am here to respond to your questions. This is both a corridor development building out in the corridor for AT & T Wireless between Salina and the state line as well as they are in the process of building out their services all of the Metropolitan Area. AT & T wants to go on existing towers wherever possible.

WARREN You want 250 feet. I don't see there is a problem with that.

JONES We want 250 feet, and we don't want build higher than that due to the additional cost.

BARFIELD What are you attempting to accomplish by doing the 250 foot?

JONES One of the problems is to provide sufficient height while working with the master plan for Sedgwick County to make sure there is sufficient distance between towers but still attach or connect to the tower to the south that was approved in Sumner County last night.

DUNLAP Wouldn't it be less expensive to go up to 250 foot? How long would it take you to sell those top two locations? What is the need for the other providers? Is there a big push right now?

JONES There is a lack of vendors for Sumner County. We are looking at the I-135 corridor from Mexico to Canada. There is only one linkage in northeast Nebraska that is not now four lanes. Nebraska is lacking a 30 mile stretch to complete that as a four lane connection.

BARFIELD My understanding of the Zoning Code is that whoever builds the tower has to occupy the space at the top.

KNEBEL The Code does not specifically state that. What it does state is that if the top 20 percent portion of the tower is unused for 12 months that portion of the tower has to be removed. Staff is recommending against setting up this person or tower company to have to remove something if they don't lease out that space at the top. We have had that occur on some other towers; therefore, we recommend constructing the tower to the 220-foot height needed by AT&T and adding the additional height later.

**MOTION:** To approve subject to the recommendation and findings contained within the staff report except that Condition D be changed to a maximum height of 250 feet and Condition E be eliminated.

**WARREN** moved, **ANDERSON** seconded the motion.

JOHNSON Don't we need to do something about the lighting?

KNEBEL That is addressed by Condition F.

DUNLAP If we approve 250 feet, they can only build 220 foot? They don't have to build to 250 foot?

KNEBEL That is correct.

BISHOP If we approve the motion we would not be following the guidelines in the Wireless Communication Master Plan. We are saying to build it higher than you need it and never mind what the policy is.

GAROFALO Is Condition E eliminated?

KNEBEL Yes, that is the way I understand it.

BARFIELD We are not being consistent on the requirement we have put on other towers. What we have done for other applicants is require them to build at the height of the highest initial user and add onto the tower later if they need to.

WARREN Each case is different. This is way out in rural community and a lot of us don't agree with the policy.

BARFIELD To me it does not make much sense to build and then have to remove it if it is not sold or leased.

MARNELL If they are approved for a tower not to exceed 250 feet and they build to the 220 feet, will they be required to have the tower designed to be able to go another 25% as part of the requirement.

KNEBEL That is not the way I understood the motion. The motion is to change Item D, to say the support structure shall not exceed 250 feet in height and eliminate Item E so there would not be any future requirement for a height extension.

**MOTION CARRIED: 9-2 MCGINTY and BISHOP opposed.**

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8. **Case No.: CUP2003-18 DP200 Amendment #3** – Laham Holding Co., L.L.C. (owner); P.E.C. P.A. c/o Rob Hartman (agent) request Amendment to The Wilson Property Northeast Commercial C.U.P. on property described as;

Lots 1 and 8, Block 1, Legacy Park Wilson Estates 2nd Addition. Generally located South of 21<sup>st</sup> Street North and west of Webb Road.

**BACKGROUND:** The applicant is requesting to amend the signage provisions for property zoned "LC" Limited Commercial of DP-200 Wilson Property NE Commercial C.U.P. The request is to increase the amount and type of wall signage allowed in Parcels 3 and 12 of the "LC" Limited Commercial district.

Four parcels in DP-200 are zoned "LC". However, Parcels 1 and 2 were zoned "LC" and developed prior to the current wall signage provisions adopted by Amendment #2 and were not included as applicants with Amendment #2. These parcels were developed in conformance with the less stringent wall sign provisions of the Sign Code.

Parcels 3 and 12 were rezoned "LC" as part of Amendment #2. Currently, wall signage limitations (General Provision 6D) as adopted in Amendment #2 are the same in the "LC" and "GO" General Office district for the C.U.P. No change is requested for the "GO" district. It permits 32 square feet per tenant, except that buildings with a minimum of 15,000 square feet exceeding a 150-foot setback from Webb Road or 21<sup>st</sup> Street North may be allowed 64 square feet if only one sign is used for the entire building. Maximum height of this sign is 30 feet, with a maximum of 24" tall letters. The wall signs are required to be individual letters, black matte in color, in cast aluminum or fabricated aluminum reverse channel type with either indirect (ground lighted) or halo-lighted illumination.

The requested change for "LC" parcels is to allow a maximum of eight percent of building façade for elevations having street frontage or having a 150-foot paved area in front of the elevations. No more than two signs per elevation would be permitted on up to three elevations. The proposed language states that "Preferably all signs shall be individual channel letter type construction (no cabinet wall signs allowed) with halo and/or indirect type illumination. The color of all signs is matte black. The use of tenant corporate colors will be allowed if approved by the developer." The main changes in this language is allowing channel letter type construction to be preferred but not required and allowing use of corporate colors if approved by the developer.

The existing wall sign restrictions remain in place for wall signs along the border with Clubhouse Villas to the south. Only small identification signs per Sec. 24.04.190.3 of the Sign Code on the south elevation of Parcels 7, 10, 11 and 12 are permitted.

Currently, DP-200, also known as Legacy Park, is developed with a bank (Prairie State Bank) on Parcel 1, a drug store (Walgreens) on Parcel 2, and medical offices on Parcels 5, 6 and 11. A restaurant is under construction on Parcel 3. Parcels 4, 7, 10 and 12 are undeveloped.

The surrounding area includes Tallgrass residential areas to the north of 21<sup>st</sup> Street North and a new shopping center, Cambridge Market, being developed east of Webb Road. Clubhouse Villas, a townhouse condominium development, is located directly south of the application area.

**CASE HISTORY:** The property is platted as Legacy Park Wilson Estates Addition, recorded June 27, 2000, and Legacy Park Wilson Estates Second Addition, recorded January 15, 2003. DP-200 was approved November 5, 1991, and amended in January 11, 2000 and May 14, 2002.

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-5"; "LC"	Residential (Tallgrass)
EAST: "LC"; "B"	Shopping center, offices
SOUTH: "SF-5"	Townhouse condos (Clubhouse Villas)
WEST: "GO"; "B"; "SF-5"	Assisted living, single-family, patio homes, vacant

**PUBLIC SERVICES:** The site has access from 21<sup>st</sup> Street North and Webb Road. Both are paved with left-turn lanes and two through lanes at the intersection. Average traffic (ADTs) in 2000 was 12,276 cars/day for the west leg of the 21<sup>st</sup>/Webb intersection and 13,000 to 14,500 for the north and south legs of the intersection. Traffic is projected to increase to 19,700 ADTs on the west leg, 26,000-28,000 for the south leg, and 24,000-26,000 for the north leg in 2030.

Normal municipal services are available.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the 1999 *Update to the Comprehensive Plan* identifies the general location as appropriate for "office and commercial" development. The **Commercial/Office Objective III.B** of the 1999 *Update* seeks to "develop future retail/commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses".

Commercial locational guidelines stipulate that commercial development should require site design features to limit noise, lighting, and other aspects of commercial development to not adversely impact surrounding residential areas.

**RECOMMENDATION:** The requested changes in wall signage still maintain a consistent and restrained level of wall signage, although it introduces the possibility of larger signs with the use of corporate colors as incidental accent. This is similar to other "LC" restaurant and bank signage in Bradley Fair and the existing signage for Walgreens and Prairie State Bank. Staff recommends some minor changes for clarification. Based upon these recommendations and the information available prior to the public hearing, staff recommends the request for Amendment #3 be APPROVED subject to the following conditions:

1. General Provision 6F-Wall signs for Parcels 3 and 12: Building sign requirements for parcels zoned



Limited Commercial shall be allowed no more than two (2) signs per elevation and only on elevations having street frontage or a 150' paved area in front of the elevation (including the north elevation of Parcel 3), on up to three (3) elevations, with a maximum square footage of 100 square feet or eight (8) percent, whichever is less, of the elevation area. Wall signs shall be individual channel letter type construction (no cabinet wall signs allowed) with halo and/or indirect type illumination. The color of all signs is matte black; however the use of tenant corporate colors may be permitted as incidental accent. No building or wall signs shall be permitted on the south-face of all structures on parcels 7, 10, 11 and 12, except for small identification signs as described in Section 24.04.190.3 of the Sign Code.

2. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
3. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
4. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
5. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area to the east of Webb Road is developing with commercial and office uses, zoned "LC" Limited Commercial, and with apartments farther to the east. The land to the north (Tallgrass) is zoned "LC" at the corner but used for utility purposes and zoned "SF-5" on the majority of the tract with residential development. The property to the south is being developed with residential uses, including Clubhouse Villas at Wilson Estates, and is zoned "SF-5" Single-Family. The property to the west includes a small tract zoned "GO" that is vacant and likely to be developed with low to moderate density residential uses or more single-family and patio residential development on property zoned "SF-5".
2. The suitability of the subject property for the uses to which it has been restricted: The site is already approved for "LC" or "GO" uses and could be developed as approved.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The modifications of the wall signage requirements would permit increased wall signage on Parcels 3 and 12, which will be visible from 21<sup>st</sup> Street North and Webb Road. The signage on Parcel 3 may be visible from a few residential properties north of 21<sup>st</sup>, but the visibility should be reduced by the intervening office and bank buildings located along 21<sup>st</sup>. Prohibiting wall signage except for building identification signs on the south elevation of Parcel 12 should mitigate the impact on Clubhouse Villas to the south.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The project is generally in conformance with the Land Use Guide of the adopted Comprehensive Plan.
5. Impact of the proposed development on community facilities: The amendment should have insignificant impact on community facilities.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MARNELL** moved, **JOHNSON** seconded the motion, and it carried (11-0).

9a. **Case No.: CUP2003-15 DP264 (Associated with ZON2003-16)**

9b. **Case No.: ZON2003-16 (Associated with CUP2003-15 DP264)**

9c. **Case No.: CUP2003-15 DP264 (Associated with ZON2003-18)**

9d. **Case No.: ZON2003-18 (Associated with CUP2003-16 DP264)** - Dorothy M. R. Matthew Living Trust (owner), Don Folger, Jr. & Assoc, c/o Don Folger (agent) request Creation of The Louis Development Residential and Commercial C.U.P. on property described as;

**LEGAL DESCRIPTION:**

**Case No.: CUP2003-15 DP264 (Associated with ZON2003-16)** A tract in the southwest quarter of Sec. 12, Twp. 27-S, R-2-W of the 6<sup>th</sup> P.M., Sedgwick County, Kansas described as commencing at the southwest corner of said southwest quarter; thence east along the south line of said southwest quarter, 905.00 feet for a point of beginning; thence north parallel with the west line of said southwest quarter, 490.00 feet; thence east parallel with the south line of said southwest quarter, 375.00 feet; thence south parallel with the west line of said southwest quarter, 490.00 feet to a point on the south line of said southwest quarter; thence west 375.00 feet to the point of beginning;  
Together with:  
A tract in the southwest quarter of Sec. 12, Twp. 27-S, R-2-W of the 6<sup>th</sup> P.M., Sedgwick County Kansas described as commencing at the southwest corner of said southwest quarter; thence east along the south line of said southwest quarter, 470.00 feet; thence north parallel with the west line of said southwest quarter, 490.00 feet; thence east parallel with the south line of said southwest quarter

435.00 feet for a point of beginning; thence north parallel with the west line of said southwest quarter, 500.00 feet; thence east parallel with the south line of said southwest quarter, 435.00 feet; thence south parallel with the west line of said southwest quarter, 990.00 feet to a point on the south line of said southwest quarter; thence west along the south line of said southwest quarter, 60.00 feet; thence north parallel with the west line of said southwest quarter, 490.00 feet; thence west 375.00 feet to the point of beginning.

**Case No.: ZON2003-16 (Associated with CUP2003-15 DP264)** A tract in the southwest quarter of Sec. 12, Twp. 27-S, R-2-W of the 6<sup>th</sup> P.M., Sedgwick County, Kansas described as commencing at the southwest corner of said southwest quarter; thence east along the south line of said southwest quarter, 905.00 feet for a point of beginning; thence north parallel with the west line of said southwest quarter, 490.00 feet; thence east parallel with the south line of said southwest quarter, 375.00 feet; thence south parallel with the west line of said southwest quarter, 490.00 feet to a point on the south line of said southwest quarter; thence west 375.00 feet to the point of beginning.

**Case No.: CUP2003-16 DP264 (Associated with ZON2003-18)** A tract in the southwest quarter of Sec. 12, Twp. 27-S, R-2-W of the 6<sup>th</sup> P.M., Sedgwick County, Kansas described as commencing at the southwest corner of said southwest quarter; thence east along the south line of said southwest quarter, 470.00 feet for a point of beginning; thence north parallel with the west line of said southwest quarter, 490.00 feet; thence east parallel with the south line of said southwest quarter, 435.00 feet; thence south parallel with the west line of said southwest quarter, 490.00 feet to a point on the south line of said southwest quarter; thence west 435.00 feet to the point of beginning;

Together with:

A tract in the southwest quarter of Sec. 12, Twp. 27-S, R-2-W of the 6<sup>th</sup> P.M., Sedgwick County, Kansas described as commencing at the southwest corner of said southwest quarter; thence east along the south line of said southwest quarter, 470.00 feet; thence north parallel with the west line of said southwest quarter, 490.00 feet for a point of beginning; thence continuing north parallel with the west line of said southwest quarter, 500.000 feet; thence east parallel with the south line of said southwest quarter, 435.00 feet; thence south parallel with the west line of said southwest quarter, 500.000 feet; thence west 435.00 feet to the point of beginning.

**Case No.: ZON2003-18 (Associated with CUP2003-16 DP264) LC:** A tract in the southwest quarter of Sec. 12, Twp. 27-S, R-2-W of the 6<sup>th</sup> P.M., Sedgwick County, Kansas described as commencing at the southwest corner of said southwest quarter; thence east along the south line of said southwest quarter, 470.00 feet for a point of beginning; thence north parallel with the west line of said southwest quarter, 490.00 feet; thence east parallel with the south line of said southwest quarter, 435.00 feet; thence south parallel with the west line of said southwest quarter, 490.00 feet to a point on the south line of said southwest quarter; thence west 435.00 feet to the point of beginning

**SF-5:** A tract in the southwest quarter of Sec. 12, Twp. 27-S, R-2-W of the 6<sup>th</sup> P.M., Sedgwick County, Kansas described as commencing at the southwest corner of said southwest quarter; thence east along the south line of said southwest quarter, 470.00 feet; thence north parallel with the west line of said southwest quarter, 490.00 feet for a point of beginning; thence continuing north parallel with the west line of said southwest quarter, 500.000 feet; thence east parallel with the south line of said southwest quarter, 435.00 feet; thence south parallel with the west line of said southwest quarter, 500.000 feet; thence west 435.00 feet to the point of beginning.

**BACKGROUND:** The applicant is requesting to create DP-264 Louis Development Community Unit Plan. The property would be divided into two large parcels. Parcel 1, consisting of eight acres abutting 13<sup>th</sup> Street North, would be zoned "LC" Limited Commercial. Parcel 2, with 12 acres, would be zoned "SF-5" Single-family but would allow multi-family structures so long as the overall density of the development did not exceed one dwelling unit per 5,000 square feet. The maximum number of units would be 104. Currently the eastern half of the property is in the city of Wichita and the western half is in the unincorporated area of Sedgwick County.

The general provisions for Parcel 1 generally correspond to the development pattern specified in the Far West Policy, with the exception that no limitation is for the size of individual uses and the architectural provisions require compatibility within the parcel but do not require use of residential type materials.

Maximum building coverage is 30 percent; floor area ratio is 35 percent. Maximum height is 35 feet. The C.U.P. includes provisions for landscaping per Landscape Ordinance of the City of Wichita, lighting limited to 14 feet within 200 feet of residential zoning and residential areas, building, and monument type signage with a maximum height of 20 feet.

The property is on the fringe of current development. The property to the south is zoned "SF-5" Single-family Residential and being developed with Hickory Creek Estates and Liberty Park Addition. Two churches are located on the abutting property to the east and west. Both properties are zoned "SF-5". The church property to the west would have been the likely location for a request for commercial use. Also the property to the southwest is zoned "SF-20" and developed with a KGE substation. DP-231 Copper Gate is located on the northwest and southwest corners of the intersection of 135<sup>th</sup> Street West and 13<sup>th</sup> Street North. This is a 17-acre tract zoned "LC" and approved for commercial development. Property to the north and northeast is held in larger, suburban residential tracts, mostly zoned "SF-20".

**CASE HISTORY:** The property is unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-20" Suburban residential

SOUTH: "SF-5" Vacant (being platted for single-family); single-family  
EAST: "SF-5" Church, suburban residential  
WEST: "SF-5"; "SF-20" Church, suburban residential

**PUBLIC SERVICES:**

2002 traffic counts for the 135<sup>th</sup> and 13<sup>th</sup> intersection are not available. The provisional 2030 traffic projection (ADT) for 13<sup>th</sup> Street North east of 135<sup>th</sup> is 13,000, and the provisional traffic projection (ADT) for 135<sup>th</sup> Street West is 8,500.

The C.U.P. proposes two points of access. One would be located across from Forestview, the street serving Liberty Park Addition, and the other opening would be located near the eastern edge of the C.U.P.

Other normal public services will be available for the development. Sanitary sewer lines are being extended in the vicinity currently, and water service is available.

**CONFORMANCE TO PLANS/POLICIES:**

The "Wichita Land Use Guide, as amended 1/02" of the 1999 *Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "Low density residential" development.

The Far West Policy would permit up to 24 acres of commercial development at the intersection of 13<sup>th</sup> Street North and 135<sup>th</sup> Street West. Seventeen acres are approved for commercial development on the west side of the intersection, but both corners of the east side are developed with non-commercial uses (church and utility substation). The proposed eight acres would result in a total of 25 acres of commercial use at or near the intersection.

**Commercial Objective III.B** encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses", with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the "Wichita Land Use Guide", and **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. The **Commercial Locational Guideline #3** of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed C.U.P. is in conformance with the general recommendations of the Comprehensive Plan.

**Residential Objective II.A.1** seeks to use community unit plans and other tools to promote mixed use development, higher density residential environment and appropriate buffering. The use of Parcel 2 for multi-family at 5,000 square feet per dwelling unit density is in conformance with this objective.

**RECOMMENDATION:** The northwest and southwest corners of 13<sup>th</sup> Street North and 135<sup>th</sup> Street North are zoned "LC" and subject to the DP-231 Copper Gate C.U.P. The intersection is identified by the Far West Policy as being suitable for up to 24 acres of commercial use. Normally, the remaining eight acres would have been located on the northeast or southeast corners of the intersection. However, the northeast corner is being developed with a church and the southeast corner is the location of a utility substation. While the proposed C.U.P. is shown for "low density residential" rather than "commercial", it is perhaps suitable for completing the amount of commercial use in the vicinity of the intersection since the property is buffered by a church on both the east and west side and the applicant proposes to develop the property to the north with a multi-family residential use and thus providing another buffer. It is located in within the 2010 urban service area on the Comprehensive Plan.

A traffic impact study would be warranted to determine the scope of required transportation improvements since the site could generate more than 600 trips during the peak afternoon hour. The applicant has indicated general agreement with requested transportation improvements in lieu of preparing the traffic impact study to document the needed improvements. These improvements include a right-turn decel lane, left center turn lane for eastbound traffic and a guarantee for signalization at one entrance if warranted by future traffic volumes.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to platting within one year and subject to the following conditions:

- A. APPROVE the zone change (ZON2003-00016) to "LC" Limited Commercial and zoned change (ZON2003-00018) to "LC" Limited Commercial and "SF-5" Single-family Residential subject to platting of the entire property within one year;
- B. APPROVE the Community Unit Plan (DP-264), subject to the following conditions:
  1. Transportation requirements:
    - a. The CUP should show raised center medians on all main driveways to prevent left-turns in and out of adjacent parcels for a distance of at least 150 feet back from the right-of-way line. (Sedgwick County's Access Management Policy requires a corner clearance of 150' on collector type streets, and the volume of site-traffic on these commercial driveways are typical of collector streets.)
    - b. The CUP must ensure that private drive openings are not impacted/ blocked by the layout of parking stalls or landscaping.
    - c. Continuous right-turn deceleration lane should be provided along the 13<sup>th</sup> Street North to both entrances.
    - d. The CUP should guarantee the cost of configuring and installing a traffic signal, if warranted in the future, at one entrance on 13<sup>th</sup> Street North.
    - e. CUP should provide left-turn lanes with adequate storage for queued vehicles on 13<sup>th</sup> Street North.
    - f. A guarantee shall be provided for paving on 13<sup>th</sup> Street North to county standards.
    - g. Provision of a traffic impact study is not required if the applicant accepts the above recommendations.

2. Two access openings shall be allowed, with at least one being full movement. The location of the western opening shall be aligned with Forestview Street.
3. No development on Parcel 2 shall be permitted until a more detailed site plan showing the general configuration of buildings, setbacks, and type of internal streets shall be provided for review and approval by Planning Director, in conjunction with the Superintendent for Central Inspection.
4. General Provision #6 shall limit the maximum size of signs to 100 square feet and shall add provision for one entry sign to Parcel 2 per Sign Code provisions applicable in the MF-18 district.
5. General Provision #17 shall specify that the C.U.P. shall employ materials similar to surrounding residential areas.
6. General Provision #19 shall specify that no single user shall exceed 8,000 square feet except for a grocery store or pharmacy, which shall not exceed 40,000 square feet.
7. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
8. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
9. All property included within this C.U.P. and zone case shall be platted within one year after approval of this C.U.P. by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
10. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-264) includes special conditions for development on this property.
11. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The property is on the fringe of current development. The property to the south is zoned "SF-5" Single-family Residential and being developed with Hickory Creek Estates and Liberty Park Addition. Two churches are located on the abutting property to the east and west. Both properties are zoned "SF-5". The church property to the west would have been the likely location for a request for commercial use. Also the property to the southwest is zoned "SF-20" and developed with a KGE substation. DP-231 Copper Gate is located on the northwest and southwest corners of the intersection of 135<sup>th</sup> Street West and 13<sup>th</sup> Street North, which is a 17-acre tract zoned "LC" and approved for commercial development. Property to the north and northeast is held in larger, suburban residential tracts, mostly zoned "SF-20".
2. The suitability of the subject property for the uses to which it has been restricted: The property is suitable for development in single-family use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed development of Parcel 1 includes provisions to reduce the impact of commercial use on nearby residential areas. Proposed densities for Parcel 2 are those allowed by the "SF-5" district, which exceeds that typically achieved in conventional subdivisions but meets the Unified Zoning Code density requirements. This allows for flexibility in housing type.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "low density residential" development. **Commercial Objective III.B** encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses", with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the "Wichita Land Use Guide", and **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. The **Commercial Locational Guideline #3** of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas. While commercial use is not in conformance with the land use guide, the presence of the substation and church at the sites nearer the intersection make this one of the closest areas for commercial use in completion of the Far West policy acreage figures. The C.U.P. general provisions and staff recommendations are intended to achieve site design features to conform to the locational guidelines and **Strategy III.B.2, Residential Objective II.A.1**, and Far West policy guidelines. The requested use of Parcel 2 for multi-family use but at a density of 5,000 square feet per dwelling unit rates will offer alternative types of residential housing in the Far West area.
5. Impact of the proposed development on community facilities: The traffic increases from the development should be mitigated by the addition of the center turn lane and the decel lanes. Other community facilities are being extended to serve new development in the vicinity, as well as being available for this site.

DONNA GOLTRY, Planning staff presented staff report.

WARREN The normal condition is within 12 months annexation, within that time subject to platting?

GOLTRY Yes.

DUNLAP The northeast corner of that intersection that is a corner island annexation to Wichita that doesn't touch it anywhere else? The Westside Policy? Is it a policy and not an ordinance?

GOLTRY Yes, it is a Policy adopted by the City Council?

HENTZEN Those are sand roads on the south of the properties and on the west? How far east from 119<sup>th</sup> has the City annexed so far on 13th?

GOLTRY The road is a county road.

HENTZEN Back towards 119<sup>th</sup> Street is a small bridge on that dirt road, and it gets under water when the Cowskin gets full. Is that bridge in the City or the County?

GOLTRY That is a county bridge.

GAROFALO Is the applicant in agreement with all of the conditions?

DON FOLGER, JR. AND ASSOCIATIONS, DON FOLGER We are in agreement with all of the staff conditions. We are trying to develop this by having some retail in the front, but we did not want to have the high impact of regular limited commercial.

WARREN I am surprised that you requested a Planned Unit Development instead of a Community Unit Plan.

FOLGER We don't have the nitty-gritty figured out to do a PUD. We want to make sure we have the zoning and get the land purchased—that is what we are trying to do.

PHILIP L. SCHOENHOFER, 13036 W 13<sup>TH</sup>, WICHITA KS 67235 I am the property next to the church. I am the property that sits back. A couple of my concerns have been addressed and anytime that you are in a area of—homes \$250,000 plus. With the densities that he is asking for, that should dissuade a lot of the neighbors' worries about that. The "SF-5" grants—it can go so many different directions—and I am concerned about that. That bridge Mr. Hentzen brought up—that the bridge is going to be replaced. Every time that comes up, they say that is part City part County. When they came through and took the whole thing into the City, a large portion where the lake is remained County property because the single resident lives there didn't want to go into the City. That is area there (pointing to the track still in the unincorporated area) is one-island and apparently control ¼ of that bridge and the bridge is in bad repair. The asphalt part of the road only comes out to the entrance of Hickory Creek housing addition. It does not come out to the extent of the Hickory Creek Addition. The traffic is increasing out there and we are not addressing the problems out there.

SCHOENHOFER The city is coming to us and we don't have any qualms but we need infrastructure out there that has to go with it.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**BARFIELD** moved, **MCGINTY** seconded the motion, and it carried (11-0).

MILLER To answer his question about scheduling the bridge, it is scheduled for the 2004 C.I.P. for the improvement of the bridge the whole mile is my understanding.

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**10. Case No.: DR2003-12-** The City of Maize seeks annexation of properties located east and west of North Maize Road and adjacent to 37<sup>th</sup> Street North on property described as;

DAVID BARBER Planning staff presented staff report and recommendation. Staff recommends that the Metropolitan Area Planning Commission find the unilateral annexations proposed by Resolution Nos. 333-03, 334-03 and 336-03 of the City of Maize, to be **inconsistent** with the adopted Wichita-Sedgwick County Comprehensive Plan.

HENTZEN These five properties proposed for unilateral annexation by Maize are now in the City of Wichita?

BARBER That is correct. Annexation becomes effective upon the publication of the ordinance. The ordinances for these requests have now been published, so these properties are now officially in the City of Wichita limits.

MILLER There are three types of annexations. Unilateral annexations take about 100 days and that is what Maize is proposing here. The dots on the map represent the property owners that have asked for annexation into the City of Wichita, rather than be annexed unilaterally into the City of Maize. Requested annexations do not require public hearings etc., and do not take as long.

HENTZEN The City of Wichita has already annexed these properties then.

**MOTION:** That the unilateral annexation of the City of Maize is not consistent with the Wichita-Sedgwick County Comprehensive Plan.

**BISHOP** moved, **MARNELL** seconded the motion, and it carried (10-0).  
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11. **Case No.: DR2003-14** - The City of Park City seeks annexation of properties located adjacent to 93<sup>rd</sup> Street North and west of Hydraulic Avenue, adjacent to The City of Park City

Was pulled from Agenda and not heard.

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The Metropolitan Area Planning Department informally adjourned at 3:34 p.m.

State of Kansas     )  
Sedgwick County    ) ss

I, Dale Miller, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on \_\_\_\_\_, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Dale Miller, Secretary  
Wichita-Sedgwick County Metropolitan  
Area Planning Commission

(SEAL)